

5. As Judge Shadur explained in *Kason v. Amphenol Corp.*, 132 F.R.D. 197 (N.D.Ill. 1990): “Rule 68 is really unambiguous -- its first sentence provides only for the service of offers of judgment on the adverse party, while its second sentence calls for filing of the offer only if the adverse party accepts it within ten days after such service. By strong negative inference, that latter reference to filing if and when the offer is accepted confirms the plain meaning of Rule 68's first sentence that no filing is permitted at the time of tender.” *Id.*

6. In cases where an offer of judgment has been filed with the court at the same time it was extended to the opposing party, the appropriate corrective action is to strike the early filing. *See, Kason v. Amphenol Corp.*, 132 F.R.D. 197 (N.D.Ill. 1990); *Labuda v. Schmidt*, 2005 U.S. Dist. LEXIS 20948 (D. Ill. 2005); *Scheriff v Beck*, 452 F Supp 1254, 25 FR Serv 2d 1161(DC Colo., 1978); *Nabors v. Texas Co.*, 32 F. Supp. 91 (W.D. La. 1940).

WHEREFORE, Plaintiffs request an order directing the Clerk to strike from the record of this case the Defendant's Offer of Judgment that was filed on March 8, 2008.

Respectfully submitted,

March 24, 2008

S/
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